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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/682,083

10/10/2003

Frieder K. Kempe

K032 0024

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08/25/2006

OYEN, WIGGS, GREEN & MUTALA LLP
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EXAMINER

ALI, SHUMAYA B

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/682,083

Applicant(s)

KEMPE, FRIEDER K.

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-70 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: NPL (1 page)

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6/13/06 have been fully considered but they are not persuasive. Argument with respect to Kempe US Patent No. 6,146,351 teaches a method of reducing delayed onset muscle soreness resulting from unaccustomed exercise or sudden mechanical injury ... As is well known to those skilled in the art delayed onset muscle soreness is not a result of disease, but rather a temporary condition due to unaccustomed exercise or sudden mechanical injury. Consequently claims 1 and 4-14, which relate to treatment of pain resulting from inflammatory disease, are clearly not anticipated resulting from inflammatory disease, are clearly not anticipated. Nor is there any suggestion in US Patent No. 6,146,351 that would lead the person skilled in the art to conclude that a method of treatment for soreness resulting from unaccustomed exercise would be applicable to methods of treating the chronic symptoms of inflammatory disease any more than it would lead the person skilled in the art to conclude that the method could be used to treat fibromyalgia (see remarks page 12 lines 12-23) Examiner takes the position that Delayed Onset Muscle Soreness (DOMS) is an inflammatory disease, therefore US Patent 6,146,351 inherently teaches treatment of pain resulting from inflammatory disease. It is well known in Occupational Medicine that tensile load and shear forces of tendons have been implicated in several different forms of tendonitis associated with different anatomical components of the muscle/tendon unit. Some of these disorders diagnosed as tendonitis include suprapatellar tendonitis, lateral epicondylitis, fibrocartilaginous metaplasia, peritendinitis, delayed onset muscle soreness, and DeQuervain's tenosynovitis (attached reference to Moore from Occupational Medicine: State of the Art Reviews, vol.7, no.

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3, pages 713-740). Within the scope of the claimed invention Applicant considers tendinitis as an inflammatory disease (see claims 15 and 16), therefore US Patent No. 6,146,351 inherently would lead the person skilled in the art to conclude that a method of treatment for soreness resulting from unaccustomed exercise would be applicable to methods of treating symptoms of inflammatory disease. Therefore, rejection to claims 1,4-14 under 35 U.S.C. 102(b) as being anticipated by Kempe US Patent No. 6,146,351 and claims 2,3,15-70 under 35 U.S.C. 103(a) as being unpatentable over Kempe US Patent No. 6,146,351 is maintained and made FINAL.

FINAL ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kempe US Patent No. 6,146,351.

As to claim 1, Kempe discloses a method of treatment of pain (“muscle soreness” see abstract) in a patient caused by an inflammatory disease comprising shielding the affected areas of the patient from high frequency electromagnetic radiation (“shielding painful areas of a human body with a cloth”, col.2 lines 46-47), while not shielding said affected areas from low frequency electromagnetic radiation (regarding “not shielding” and “low frequency”, applicant on page 5 lines 15-19 stated that low frequency electromagnetic fields can be accomplished by

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wrapping clothing with a sheet of textile where the textile is made from a radiation shielding textile. Additionally stated "FARABLOC" is an appropriate shielding textile, see page 5 lines 20-25. Kempe US'351 inherently seem to meet the underlined method step for disclosing FARABLOC as the radiation shielding fabric, see col.4 lines 25-26), for a period of time sufficient to reduce the symptoms.

As to claim 4, Kempe discloses wherein said shielding is accomplished by covering the affected area of said patient with a radiation-shielding textile for a period of time sufficient to reduce said symptoms (col.2 lines 46-51).

As to claim 5, Kempe discloses wherein said radiation-shielding textile comprises between two and thirty-five percent by weight of a continuous system of electrically conductive fibers and the remainder of non-conductive fibers (col.2 lines 46-51).

As to claim 6, Kempe discloses wherein said radiation-shielding textile is a woven cloth and said electrically conductive fibers are stainless steel fibers (col.2 lines 51-53).

As to claim 7, Kempe discloses wherein said radiation-shielding textile is a woven cloth and said electrically conductive fibers are formed of a material selected from the group copper, silver or ceramic (col.4 lines 33-34)

As to claim 8, Kempe discloses wherein said radiation-shielding textile is a knitted fabric and said electrically conductive fibers are stainless steel fibers (col.4 lines 25-26).

As to claim 9, Kempe discloses wherein said radiation-shielding textile is a knitted fabric and said electrically conductive fibers are formed of a material selected from the group copper, silver or ceramic (col.4 lines 25-26, 34-35).

As to claim 10, Kempe discloses wherein said radiation-shielding textile comprises about thirteen percent by weight of a continuous system of electrically conductive fibers and the remainder of non-conductive fibers (col.4 line 26).

As to claim 11, Kempe discloses a method of treatment of pain (“muscle soreness” see abstract) by an inflammatory disease comprising the steps of: (i) providing an article of clothing configured to substantially cover the affected areas of the patient with high-frequency electromagnetic radiation shielding cloth which does not shield low frequency electromagnetic radiation (“shielding painful areas of a human body with a cloth”, col.2 lines 46-47); and (ii) said patient wearing said article of clothing whereby said affected areas of said patient are substantially covered (“cover a large enough area” , col. 4 lines 10-15) by said cloth over a period of time sufficient to reduce said pain.

As to claim 12, Kempe discloses wherein radiation-shielding cloth comprises between two and thirty-five percent by weight of a continuous system of electrically conductive fibers and the remainder of non-conductive fibers (col.2 lines 46-51).

As to claim 13, Kempe discloses wherein said electrically conductive fibers are formed of a material selected from the group copper, silver or ceramic (col.4 lines 25-26, 34-35).

As to claim 14, Kempe discloses wherein said radiation-shielding textile comprises about thirteen percent by weight of a continuous system of electrically conductive fibers and the remainder of non-conductive fibers (col.4 line 26).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,15-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempe US Patent No. 6,146,351.

As to claim 2, Kempe do not discloses wherein said high frequency electromagnetic radiation has a frequency greater than about 1 megahertz, and as to claim 3, Kempe do not discloses wherein said low frequency electromagnetic radiation has a frequency less than about 1 megahertz. However, applicant on page 5 lines 15-26 seem to state that the underlined limitations can be accomplished by the use of a radiation shielding textile and further identifies that textile being "FARABLOC". Since Kempe US'351 discloses a suitable cloth for the practice of the method of treating pain which both provides the appropriate electromagnetic shielding and the comfort of a standard non-metallic textile is a fabric sold under the trade-mark FARABLOC (see col.4 lines 21-24), it would have been obvious to one of ordinary skills in the art to consider Kempe's disclosed textile being capable of providing the radiation frequency required by claims 2 and 3.

As to claims 15-70, applicant claims that the method as recited in claim 1, can be applied for treating various inflammatory diseases recited in claims 15-70. Since Kempe US'351 discloses a method of treating muscle soreness ("soreness" is considered broadly recited under a form of inflammatory disease) using FARABLOC textile (see col.4 lines 21-24),

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which is used in the applicant's invention to treat inflammatory diseases claimed in claims 15-70, it would have been obvious to one of ordinary skills in the art to consider Kempe's disclosed invention is additionally capable of treating inflammation diseases recited in claims 15-70.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

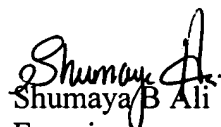
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

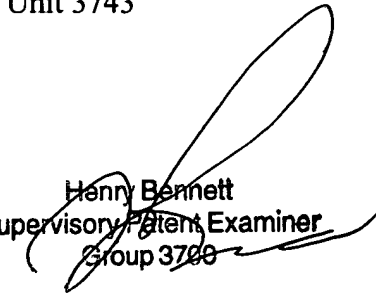
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali
Examiner
Art Unit 3743
8/17/06


Henry Bennett
Supervisory Patent Examiner
Group 3700